

FILE COPY

STATE OF WISCONSIN
BEFORE THE DENTAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JOHN TITUS FISH, D.D.S.,
RESPONDENT.

FINAL DECISION
AND ORDER

The parties in this matter having agreed to the terms and conditions of the attached Stipulation, subject to the approval of the Board, and the Board having reviewed the Stipulation and considering it acceptable, the Board adopts the Stipulation and makes the following:

FINDINGS OF FACT

1. John Titus Fish, D.D.S., Respondent, date of birth: January 17, 1912, is a dentist currently licensed and registered to practice dentistry in the State of Wisconsin; that his license which bears number 4000088 was granted April 30, 1943; that his last address reported to the Wisconsin Department of Regulation and Licensing, Division of Enforcement, is 5595 North Hollywood Avenue, Milwaukee, WI 53217.

2. The Wisconsin Department of Regulation and Licensing, Division of Enforcement has an open investigative file, 88 DEN 036 concerning Respondent. The investigative file contains allegations that Respondent committed misconduct with a dental patient on March 28, 1988. On October 23, 1990, a disciplinary complaint was issued based on those allegations.

3. The Respondent has denied the allegations contained in the Disciplinary Complaint and in investigative file, 88 DEN 036, but has agreed that there is evidence from which the Board could find the allegations to be true and has further agreed to voluntarily surrender his license to practice dentistry in the State of Wisconsin, effective January 2, 1991.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction over this matter pursuant to Wis. Stats. sec. 447.07(3).

2. The Wisconsin Dentistry Examining Board has authority to enter into this Stipulation pursuant to Wis. Stats. sec. 227.44(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the voluntary surrender of the license of John Titus Fish, D.D.S., to practice dentistry in the State of Wisconsin is hereby accepted, effective January 2, 1991.

IT IS FURTHER ORDERED, that in the event that Respondent applies for reinstatement of his license to practice dentistry in the State of Wisconsin that Respondent shall provide proof satisfactory to the Dentistry Examining Board that Respondent is capable of returning safely to the practice of dentistry in the State of Wisconsin and that reinstatement of his license to practice dentistry will be in the public interest. Such proof shall include all of the following:

1. Taking and passing all examinations then required for original licensure in Wisconsin; and
2. Mental and physical assessments and evaluations performed by practitioners acceptable to the Board, indicating that Respondent is mentally and physically capable of returning safely to the practice of dentistry in Wisconsin.

IT IS FURTHER ORDERED, that if the Board, in its discretion, determines to reinstate the license of Respondent to practice dentistry in the State of Wisconsin, following the submission of proof required in the preceeding paragraph, such licensure may be under such limitations and conditions as determined by the Board.

Dated at Madison, Wisconsin this 2nd day of January, 1991.



Eva Dahl, D.D.S., Chairperson
Wisconsin Dentistry Examining Board

JRZ:vec
DOEATTY-1049

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
JOHN TITUS FISH, D.D.S.,	:	
RESPONDENT.	:	

It is hereby agreed and stipulated, by and between, John Titus Fish, D.D.S., Respondent; Michael P. McClone, attorney for Respondent; John R. Zwieg, attorney for the Department of Regulation and Licensing, Division of Enforcement; and, the Wisconsin Dentistry Examining Board, as follows:

1. John Titus Fish, D.D.S., Respondent, date of birth: January 17, 1912, is a dentist currently licensed and registered to practice dentistry in the State of Wisconsin; that his license, which bears number 4000088, was granted April 30, 1943; that his last address reported to the Wisconsin Department of Regulation and Licensing is 5595 N. Hollywood Avenue, Milwaukee, WI 53217.

2. The Wisconsin Department of Regulation and Licensing, Division of Enforcement, has an open investigative file, 88 DEN 36 concerning Respondent. The investigative file contains allegations Respondent committed misconduct with a dental patient on March 28, 1988. On October 23, 1990, the Division issued a disciplinary complaint based on those allegations. A copy of that complaint is attached as Exhibit A.

3. That this resolution may be submitted directly to the Wisconsin Dentistry Examining Board and need not be submitted to Donald R. Rittel, the Administrative Law Judge assigned to this matter.

4. Respondent denies the allegations contained in the Disciplinary Complaint and in investigative file 88 DEN 36, but Respondent agrees that there is evidence from which the Board could find that the allegations are true and further agrees to the voluntary surrender of his license to practice dentistry in the State of Wisconsin on January 2, 1991, as set out in the attached Final Decision and Order, and agrees that the attached Findings of Fact, Conclusions of Law, and Order may be made and entered without further notice to any party.

5. The attorney for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, may appear before the Wisconsin Dentistry Examining Board to argue in favor of acceptance of this Stipulation and the entry of the attached Final Decision and Order.

6. In the event that the Wisconsin Dentistry Examining Board does not accept this resolution of this matter, the Stipulation and Final Decision and Order shall be void and of no effect and the parties agree not to contend that the Board has been biased in any manner by the submission of this proposed resolution to the Board.

Dated this 3 day of DECEMBER, 1990.

John Titus Fish, D.D.S.
John Titus Fish, D.D.S., Respondent

Dated this 6 day of Dec, 1990.

Michael P. McClone
Michael P. McClone
Attorney for Respondent

Dated this 20 day of December, 1990.

John R. Zwieg
John R. Zwieg, Attorney
Department of Regulation & Licensing
Division of Enforcement

Dated this 2nd day of January, 1991.

Eva Dahl
Eva Dahl, D.D.S., Chairperson
Wisconsin Dentistry Examining Board

JRZ:vec
DOEATTY-1048

STATE OF WISCONSIN
BEFORE THE DENTAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN TITUS FISH, D.D.S.,
RESPONDENT.

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:
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COMPLAINT
(88 DEN 36)

Pamela E. Ellefson, an investigator for the State of Wisconsin Department of Regulation and Licensing, Division of Enforcement, upon information and belief, complains and alleges as follows:

1. John Titus Fish, D.D.S., Respondent, date of birth: January 17, 1912, is a dentist currently licensed and registered to practice dentistry in the State of Wisconsin; that his license which bears #400088 was granted April 30, 1943; that his last address reported to the Wisconsin Department of Regulation and Licensing, Division of Enforcement, is 5595 North Hollywood Avenue, Milwaukee, WI 53213.
2. On March 28, 1988, Patient 1, a female who was then 26 years of age and had been a dental patient of Respondent's for approximately four years, went to Respondent's dental office at 7:45 a.m. for an appointment to have crown work done on a cracked tooth.
3. Respondent provided Patient 1 with dental services and placed a temporary crown on the tooth.
4. During the time Respondent was providing the dental services to Patient 1, Respondent asked Patient 1 how things were going in her life and she responded that she was not doing well as a result of having broken up with her boyfriend over the weekend.
5. Respondent told Patient 1 that he had just the thing to fix her up and asked if she would participate in a "meridian balancing of her heart". Patient 1 agreed to participate in the procedure and Respondent took her to his adjoining office in the professional suite.
6. Respondent, using a machine he describes as a "dermatron", placed the end of a wire leading from that machine on Patient 1's fingertips and told Patient 1 that the machine indicated that her "heart center" was off.
7. Respondent directed Patient 1 to recline on a couch located in the office and told her that in order to correct her "out of balance heart center" that he would have to touch two meridians of her body, one of which was located near the collar bone and the other of which was located in her pubic area. Respondent directed Patient 1 to unzip her jeans, and she did so.
8. Respondent placed his hand under Patient 1's shirt touching the side of one breast and asked her if she knew how to do a self-breast examination. Respondent then placed one hand on Patient 1's collarbone area and placed the other hand under her underpants against her skin over her pubic bone. Respondent's hands remained on those points on Patient 1's body for a brief

Exhibit A

period of time, and while Patient 1 was still lying on the couch Respondent, without Patient 1's permission, kissed Patient 1 on the mouth with his open mouth inserting his tongue into Patient 1's mouth and moving his tongue about in her mouth.

9. Patient 1 was shocked by Respondent's behavior and did not know what to do. She quickly sat up on the couch and Respondent rechecked her meridian and indicated it was now in balance. Patient 1 immediately left Respondent's office and never returned.

10. Patient 1 had the remainder of her crown work done by another dentist in the Milwaukee area.

11. That by engaging in the conduct described above, Respondent engaged in unprofessional conduct as defined by Wis. Ad. Code sec. DE 5.02:

(1) Engaging in any practice which constitutes a substantial danger to the health, welfare or safety of a patient or the public.

(5) Practicing in a manner which substantially departs from the standard of care ordinarily exercised by a dentist which harms or could have harmed a patient.

(10) Exercising undue influence or taking unfair advantage of a patient.

12. That by engaging in unprofessional conduct as defined by Wis. Ad. Code sec. DE 5.02(1)(5) and (10), Respondent is subject to discipline pursuant to Wis. Stats. sec 447.07(3)(a) and (f).

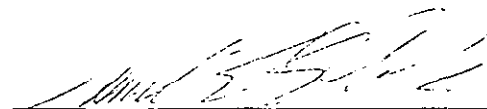
WHEREFORE, the Complainant demands that the Board hear evidence relevant to matters recited herein, determine, and impose the discipline warranted, Complainant further demands that the Board assess against the Respondent all costs of the proceeding and order them paid to the Department of Regulation and Licensing, pursuant to sec. 440.22, Wis. Stats.


Pamela E. Ellefson

STATE OF WISCONSIN)
)
COUNTY OF DANE)

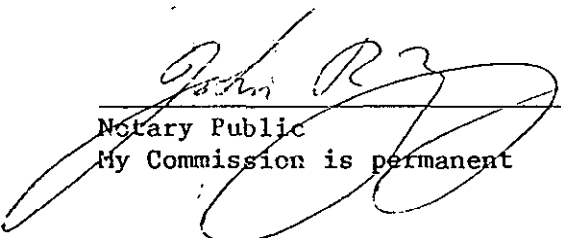
Pamela E. Ellefson, being first duly sworn on oath deposes and says that she is an investigator for the State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, and that she has read the foregoing Complaint and knows the contents thereof and that the same is true to her own

knowledge, except as to those matters therein stated on the information and belief and as to such matters, she believes them to be true.



Pamela E. Ellefson
State of Wisconsin
Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Subscribed and sworn to before me
this 23rd day of October, 1990.



Notary Public
My Commission is permanent

John R. Zwieg
Attorney for Complainant
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
(608) 266-9932

JRZ:ej
ATY-1312

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Dentistry Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Dentistry Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Dentistry Examining Board.

The date of mailing of this decision is January 4, 1991.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.